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EXAMINER

REAGAN, JAMES A

ART UNIT PAPER NUMBER

3621

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/635,735

Applicant(s)

ALLIBHOY ET AL.

Examiner

James A. Reagan

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 3-26 and 28-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-26, and 28-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### **Status of Claims**

1. This action is in response to the amendment filed on 21 March 2005.
2. Claims 1, 3, and 26 have been amended.
3. Claims 2 and 27 have been cancelled.
4. Claims 1, 3-26, and 28-34 have been examined.

## **RESPONSE TO ARGUMENTS**

5. Applicant's arguments received on 21 March 2005 have been fully considered but they are not persuasive. Referring to the previous Office action, Examiner has cited relevant portions of the references as a means to illustrate the systems as taught by the prior art. As a means of providing further clarification as to what is taught by the references used in the first Office action, Examiner has expanded the teachings for comprehensibility while maintaining the same grounds of rejection of the claims, except as noted above in the section labeled "Status of Claims." This information is intended to assist in illuminating the teachings of the references while providing evidence that establishes further support for the rejections of the claims.

Applicant's arguments are addressed in the rejections below.

### **Claim Rejections - 35 USC § 103**

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be

patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4, 6-25, 27-30 33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter et al., (US 5,892,900 A) in view of Shah-Nazaroff et al., (US 6,157,377 A).

**Examiner's Note:** The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

**Claim 1:**

Ginter discloses a "Virtual Distribution Environment" ("VDE") that comprises:

- a method of controlling a transaction (Cots 3-6: "VDE Control Capabilities") between a receiver (Ginter's "VDE content user/consumer") and a content provider (Ginter's "VDE content creator/author/publisher/repository"), occurring over a network operated by a network operator (Ginter's "Information Utility/Rights Distributor"), wherein said content provider offers enhanced content programming relating to the transaction (Abstract, Figs 1, 1 A, 2, 2A, 77, 78, 87; associated text), the method comprising the steps of..
- storing a receiver profile (Ginter's "user profile") in a data base controlled by a third party (Ginter's "Information Utility/Rights Distributor"), wherein said third party is coupled to said network (Figs 2, 78, associated text; Col 55, lines 53-56);

- intercepting a user request for the enhanced content programming, said user request originating in the receiver, wherein said intercepting step is performed by said third party (Figs 2, 77, associated text);
- determining if said user request for the enhanced content programming is authorized by said stored receiver profile (Fig 78, associated text; Col 55, lines 53-56); and
- permitting the enhanced content programming to be provided to the receiver in response to the user request if the content provider is authorized by said user profile, wherein said permitting step is performed by said third party (Figs 2, 2A, 77, 78, associated text).

Although Ginter does anticipate enhanced content (see at least column 337, lines 1-18), Ginter does not specifically disclose a request for enhanced content and delivery of the enhanced content. Shah-Nazaroff, however, in at least Figure 1 and associated text discloses an end-user ordering, paying for and receiving upgraded services and content. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Ginter's VDE with Shah-Nazaroff's technique of providing upgraded quality because up selling a better product in lieu of a mediocre product increases profitability.

With regard to the newly-added limitations of:

- preventing the enhanced content programming to be provided to the receiver in response to the user request if the first content provider is unauthorized by said user profile, wherein said preventing step is performed by said third party; and
- providing alternative enhanced content programming from a second content provider that is authorized by said user profile if the first content provider is unauthorized, wherein said providing step is performed by said third party;

See Ginter, column 138, lines 20-67; Cols 3-6: "VIDE Control Capabilities"; Col 24, lines 9-54; Col 294, lines 11-49; Fig 78: "User/Author Registration", associated text).

**Claim 3:**

Ginter discloses all the limitations of claim 1. Ginter further discloses the steps of:

- determining if said user request for the enhanced content programming is unauthorized by said stored receiver profile (Col 24, lines 9-54; Col 294, lines 11-49); and
- permitting the enhanced content programming to be provided to the receiver in response to the user request if the first content provider is not unauthorized by said user profile, wherein said permitting step is performed by said third party (Fig 78: "User/Author Registration", associated text).

**Claim 4:**

Ginter discloses all the limitations of claim 1. Ginter further discloses (Col 293, "Account Numbers and User Ids") that:

- receiver profile is comprised of multiple user profiles, wherein each user profile includes a user identifier, wherein said
- determining step is further comprised of the steps of requesting said user identifier from said receiver, receiving said user identifier by said third party,
- determining if said user profile associated with said received user identifier authorizes receipt of the enhanced content programming, and
- permitting the enhanced content programming to be provided to the receiver in response to the user request only if said user profile associated with said received user identifier authorizes the enhanced content programming.

**Claim 6:**

Ginter discloses all the limitations of claim 5. Ginter further discloses (Fig 72B, associated text):

- extracting transaction information from said intercepted user request response;  
and
- displaying at least a portion of said extracted transaction information on a display coupled to the user receiver.

**Claim 7:**

Ginter discloses all the limitations of claim 6. Ginter further discloses displaying at least one advertisement simultaneously with said portion of said extracted transaction information (Col 286, lines 39-41).

**Claim 8:**

Ginter discloses all the limitations of claim 7. Ginter further discloses that at least one advertisement includes linking information to a specific content provider (Col 109, lines 43-57; Col 314, lines 1-15).

**Claim 9:**

Ginter discloses all the limitations of claim 5. Ginter further discloses (Fig 78, associated text;):

- further comprising the steps of determining if said user request is authorized by said stored user profile; and
- directing said appended user request to the content provider if said user request is authorized by said user profile.

**Claim 10:**

Ginter discloses all the limitations of claim 5. Ginter further discloses (Figs 1A, 2, 77, 78, associated text):

- appending an address to a third party controller (Ginter's "Rights Distributor/Clearinghouse/Administrator") to said intercepted user request; and
- directing said intercepted user request to said third party controller, wherein said third party controller performs said step of appending additional parameters to said user request.

**Claim 11:**

Ginter discloses all the limitations of claim 5. Ginter further discloses (Cols 285-286: Modifying Object Content") the step of appending a marker to said user request response by the content provider, wherein said third party uses said marker to intercept said user request response.

**Claim 12:**

Ginter discloses all the limitations of claim 5. Ginter further discloses (Col 36, lines 10-43; Figs 2, 3, 4, 5A-B, 78, associated text) that user profile is comprised of information selected from the group consisting of shipping information and billing information.

**Claim 13:**

Ginter discloses all the limitations of claim 5. Ginter further discloses (Col 36, lines 10-43; Figs 2, 3, 4, 5A-B, 45-48, 78, associated text)

- said user profile is comprised of a user budget, wherein said method further comprises the steps of extracting said user budget from said user profile stored in said third party controlled data base;



- determining if said user budget permits said user purchase request; and providing said extracted user purchasing information to the content provider only if permitted by said user budget.

**Claims 14-18:**

Ginter discloses all the limitations of claim 5. Ginter does not specifically disclose the steps recited in claims 14-18. However, Ginter teaches (Fig 78, associated text; Col 309, line 56 - Col 311, line 8) that in order for content providers/authors to make their products available to users via the network they would need to register with the network operator/rights distributor/information utility (Applicant's "network operator"), enter into detailed agreements with the network operator about the rules governing the distribution, use, and payment for those products. Similarly, Ginter teaches (see previous citations above) that potential users of such products also need to establish accounts and profiles with the network operator, so that they may be unambiguously authorized to access and use the products. Lastly Ginter teaches (Fig 78, associated text) that multiple content repositories/authors/publishers can be built into the network, so as to provide a flexible, dynamic, and rich content resource for potential users. Overall, Ginter's invention provides a very fine-grained method for controlling the flow, delivery, access, and payment for all types of electronic content over a network. It would have been obvious to one ordinarily skilled in the art at the time the invention was made to use Ginter's teachings and configure a distribution network with the limitations of claims 14-18. Such a system would maximize user participation while providing the network operator with strong control over content providers/publishers. Should a content provider become un-authorized for any reason, the network operator would have the option of meeting user requests by sending them to alternate content providers/repositories, for similar or equivalent content delivery, and would therefore meet the limitations set forth in claims 14-18:

- (Claim 14) The method of claim 5, further comprising the step of determining if the content provider is authorized by a network operator to provide enhanced content programming to the user receiver.
- (Claim 15) The method of claim 14, wherein said determining step is performed prior to said first intercepting step.
- (Claim 16) The method of claim 14, wherein said determining step is performed prior to forwarding said user request response to the user receiver.
- (Claim 17) The method of claim 14, further comprising the step of terminating the network transaction between the user receiver and the content provider if the content provider is unauthorized.
- (Claim 18) The method of claim 14, further comprising the step of forwarding said appended user request to a substitute content provider if the content provider is 3 unauthorized.

**Claim 19:**

Ginter discloses all the limitations of claim 5. Ginter further discloses (Fig 78, associated text) the steps of entering said user purchase request into said third party controlled data base.

**Claim 20:**

Ginter discloses all the limitations of claim 5. Ginter further discloses (Col 308, lines 1-24, Fig 78, associated text) the steps of

- directing a request for updated information pertaining to said user request to the content provider, wherein said directing step is performed by said third party,
- receiving said updated information from said content provider by said third party, and storing said updated information in said third party controlled data base.

**Claim 21:**

Ginter discloses all the limitations of claim 5. Ginter further discloses (Figs 72C-D, associated text) the step of obtaining supplemental information from the user receiver by said third party in order to complete said user purchase request.

**Claims 22-25:**

Ginter discloses all the limitations of claim 5. Ginter does not specifically disclose the steps recited in claims 22-25, 30. However Ginter teaches (Figs 1, 7-8, associated text; Col 33, line 66 - Col 35, line 12; Col 62-63, "Electronic Appliance") that his system will accommodate electronic "appliances" built from many different hardware configurations running many well-known operating and file systems, communicating seamlessly with each other over many different networks. Therefore it would have been obvious to one ordinarily skilled in the art at the time the invention was made to build into a distribution network as taught by Ginter capabilities for determining the exact hardware/software capabilities of each user appliance, so that content may be properly formatted and therefore usable to the users. Such a system would comprise limitations meeting claims 22-25:

- (Claim 22) ..wherein said additional parameters appended to said intercepted user request is comprised of a set of user receiver capabilities.
- (Claim 23) ..wherein said additional parameters
- appended to said intercepted user request is comprised of a network specification.
- (Claim 24) .. wherein said additional parameters
- appended to said intercepted user request is comprised of a user receiver specification.
- (Claim 25) .. wherein said additional parameters

- appended to said intercepted user request is comprised of network operator business rules.

**Claim 27:**

Ginter discloses all the limitations of claim 26. Ginter further discloses (Col 42, lines 17-34, 35-36, rest of paragraph; Col 177, lines 17-46) said third party intercepting means detects triggers within said enhanced content programming.

**Claim 28:**

Ginter discloses all the limitations of claim 26. Ginter further discloses (Figs 1, 7-8, associated text; Col 33, line 66 - Col 35, line 12; Col 62-63, "Electronic Appliance") said receiver is selected from the group consisting of set-top boxes, telephones, PDAs, and computers.

**Claim 29:**

Ginter discloses all the limitations of claim 26. Ginter further discloses (Figs 1, 7-8, associated text; Col 33, line 66 - Col 35, line 12; Col 62-63, "Electronic Appliance") that network is selected from the group consisting of cable, fiber optics, telephone lines, terrestrial broadcast systems, and satellite broadcast systems.

**Claim 30:**

Ginter discloses all the limitations of claim 26. Ginter does not specifically disclose the steps recited in claim 30. However Ginter teaches (Figs 1, 7-8, associated text; Col 33, line 66 - Col 35, line 12; Col 62-63, "Electronic Appliance") that his system will accommodate electronic "appliances" built from many different hardware configurations running many well-known operating and file systems, communicating seamlessly with each other over many different networks. Therefore it would have been obvious to one ordinarily skilled in the art at the time the

invention was made to build into a distribution network as taught by Ginter capabilities for determining the exact display hardware/software capabilities of each user appliance, so that content may be properly formatted and therefore displayed to the users. Such a system would comprise limitations meeting claim 30:

- third party means for determining a set of display capabilities for said receiver, wherein said set of display capabilities is contained within said user profile; and
- third party means for formatting said selected portion of said stored data
- and said supplemental information to correspond to said set of display capabilities

**Claim 33:**

Ginter further discloses (Figs 1A, 2, 77, 78, associated text) said third party intercepting means, said third party means for directly obtaining supplemental information, said third party selecting means, said third party finalizing means, and said third party means for providing said portion of said stored user profile to said content provider is a third party controller (Ginter's "Rights Distributor/Clearinghouse/Administrator") coupled to said content provider and to said receiver via said network.

**Claim 34:**

Ginter discloses all the limitations of claim 26. Ginter further discloses (Col 285-286, "Modifying Object Content") third party means for displaying at least one advertisement on said display, said at least one advertisement displayed simultaneously with said selected portion of said stored data and supplemental information.

8. Claims 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter/Shah-Nazaroff and further in view of Kitsukawa et al., US Patent No 6,282,713.

**Claims 31-32:**

Ginter discloses all the limitations of claim 26. Ginter does not specifically disclose:

- (Claim 31)..said displayed selected portion of said stored data and said supplemental information is a semi-transparent overlay.
- (Claim 32) ..said displayed selected portion of said stored data and said supplemental information utilizes only a portion of a screen corresponding to said display.

Kitsukawa, however, discloses a method and apparatus for providing electronic advertising wherein advertisements and product promotion information are overlaid on top of user-requested content such as television shows or movies (Abstract; Figs 5, 9, associated text). The displayed additional information is shown to occupy only a portion of a screen corresponding to the display of the user-requested content. Ginter teaches that advertisements and promotional material may be appended to user-requested content utilizing the capabilities of his VIDE network. Kitsukawa teaches that such advertisement may be displayed as overlays on top of running or streaming content. Therefore it would have been obvious to one ordinarily skilled in the art at the time the invention was made to have combined Ginter's and Kitsukawa's teachings to configure a content delivery method whereby stored and supplemental information would be semi-transparent overlays. These would be displayed on top of user-requested content, to deliver advertisements/promotions or user feedback response requests, such displays being timed and tied to the content being displayed, for better user response. Such a method would have met all the limitations of claims 31 and 32.

9. Claims 5 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter/Shah-Nazaroff, in view of Applicant's admitted prior art (AAPA).

**Claim 5:**

Ginter further discloses:

- a method of augmenting (Cots 285-287: "Modifying Object Content") a network transaction between a user receiver and a content provider, the method comprising the steps of..
- storing a user profile in a data base controlled by a third party (Fig 78, associated text; Col 55, lines 53-56);
- receiving enhanced content programming from the content provider within the user receiver (Figs 2, 2A, 77, 78, associated text);
- detecting a trigger within said enhanced content programming (Col 42, lines 17-34, 35-36, rest of paragraph; Col 177, lines 17-46), said recognizing step performed by said third party;
- intercepting a user request directed at the content provider by the user receiver, said intercepting step performed by said third party (Figs 2, 77, associated text);
- appending additional parameters to said user request (Cots 285-287: "Modifying Object Content");
- directing said appended user request to the content provider (Figs 2, 77, 78, associated text) ;
- intercepting a user request response directed at the user receiver by the content provider, wherein said user request response comprises at least a portion of the network transaction (Figs 2, 77, 78, associated text);
- forwarding said user request response to the user receiver (Figs 2, 77, 78, associated text);

- intercepting a user purchase request directed at the content provider by the user receiver, said intercepting step performed by said third party (Figs 2, 77, 78, associated text) ;
- extracting user purchasing information from said user profile stored in said third party controlled data base; and providing said extracted user purchasing information to said content provider by said third party (Col 24, lines 24-53; Col 35, lines 13-53).<sup>3</sup>

The combination of Ginter/Shah-Nazaroff discloses trigger s as shown above, but does not specifically disclose that the triggers are for enhanced programming and are intercepted by the third party. Applicant, however, in the background of the specification discloses, "An interaction between a user and a third party may be initiated in a variety of ways... the user may initiate the interaction in response to a prompt within the material currently being viewed (e.g., a prompt within a television advertisement pertaining to additional available information such as specifications, delivery, pricing, etc.)." It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Ginter/Shah-Nazaroff with AAPA because the Applicant declares it background information to those of ordinary skill in the art.

In addition, see the rejection of claim 1 above.

**Claim 26:**

Ginter discloses (per above citations):

- a network-based system for supporting a user transaction, the system comprising a network,
- a content provider coupled to said network, wherein said content provider supplies enhanced content programming relating to the user transaction;



- a receiver coupled to said network, said receiver capable of receiving said enhanced content programming and interacting with said content provider via said network,
- third party means for intercepting data relating to the user transaction flowing between said content provider and said receiver via said network;
- Ginter further discloses:
- third party means for directly obtaining supplemental information from said content provider relating to the financial transaction (Col 24, lines 24-53; Col 35, lines 13-53);
- a data base coupled to said network and controlled by a third party, said data base storing a user profile associated with said receiver and at least a portion of said intercepted data and said supplemental information (Fig 78, associated text);
- third party means for selecting a portion of said stored data and supplemental information to be displayed (Col 36, lines 10-43);
- a display coupled to said receiver for displaying said selected portion of said stored data and supplemental information (Fig 7, associated text; Col 107, lines 1-28; Col 262, "User Notification Exception Interface"); and
- third party means for finalizing the user transaction with said receiver and said content provider, wherein said third party means for finalizing the user transaction further comprises the third party means for providing at least a portion of said stored user profile to said content provider (Col 36, lines 10-43).

The combination of Ginter/Shah-Nazaroff discloses trigger s as shown above, but does not specifically disclose that the triggers are for enhanced programming and are intercepted by the third party. Applicant, however, in the background of the specification discloses, "An interaction between a user and a third party may be initiated in a variety of ways... the user may

initiate the interaction in response to a prompt within the material currently being viewed (e.g., a prompt within a television advertisement pertaining to additional available information such as specifications, delivery, pricing, etc.)." It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Ginter/Shah-Nazaroff with AAPA because the Applicant declares it background information to those of ordinary skill in the art.

### **Conclusion**

10. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
11. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to **James A. Reagan** whose telephone number is **571.272.6710**. The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **James Trammell** can be reached at **571.272.6712**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair> . Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

Any response to this action should be mailed to:

**Commissioner of Patents and Trademarks**

**Washington, D.C. 20231**

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**703.305.7687** [Official communications, After Final communications labeled "Box AF"]

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JAR

16 May 2005

